

DELAWARE DEPARTMENT OF INSURANCE

MARKET CONDUCT EXAMINATION REPORT

ING USA ANNUITY & LIFE INSURANCE COMPANY

NAIC # 80942  
909 Locust St.  
Des Moines, IA 50309

As of

May 15, 2012

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Honorable Karen Weldin Stewart CIR-ML  
Insurance Commissioner  
State of Delaware  
841 Silver Lake Boulevard  
Dover, Delaware 19904

Dear Commissioner Stewart:

In compliance with the instructions contained in Certificate of Examination Authority Number 11.ANN.13, and pursuant to statutory provisions including 18 Del. C. §318-322, a market conduct examination has been conducted of the affairs and practices of:

**ING USA Annuity & Life Insurance Company**

The examination was performed as of May 15, 2012. ING USA Annuity & Life Insurance Company, hereinafter referred to as the "Company", was incorporated under the laws of Delaware. The examination consisted of two phases, an on-site phase and an off-site phase. The on-site phase of the examination was conducted at the following Company location:

1475 Dunwoody drive  
West Chester, PA 19380

The off-site examination phase was performed at the offices of the Delaware Department of Insurance, hereinafter referred to as the "Department" or "DDOI," or other suitable locations.

The report of examination herein is respectfully submitted.

## **EXECUTIVE SUMMARY**

ING USA Annuity & Life Company's 2010 annual statement filed with the Department reported Delaware direct premium of annuity contracts in the amount of \$6,397,069, of which \$5,278,612 were annuity considerations and the subject of the examination.

The examination was announced as part of an examination series on companies in the Annuity marketplace in Delaware. The examination focused on the Company's annuity business in the following areas of operation: Company Operations and Management; Complaint Handling, Marketing and Sales, Producer Licensing, and Underwriting and Rating. This effort is being conducted to ensure compliance with 18 Del. Admin. Code 1214 Senior Protection in Annuity Transactions, 18 Del. Admin. Code 1204 Replacements and 18 Del. C. §1716 Notification to Insurance Commissioner of termination.

The following exception was noted in the areas of operation reviewed:

- Marketing and Sales - 1 Exception – 18 Del. Admin. Code 1204 §5.2 Senior Protection in Annuity Transactions, Duties of Insurers and Insurance Producers.
  - Unsatisfactory supervision of the sales and suitability reviews for annuity contracts.

## **SCOPE OF EXAMINATION**

The Market Conduct Examination was conducted pursuant to the authority granted by 18 Del. C. §318-322 and covered the experience period of January 1, 2010, through May 15, 2012, unless otherwise noted. The purpose of the examination was to determine the Company's compliance with Delaware insurance laws and regulations related to the annuity market place.

The examination was a target market conduct examination of the Company's Senior Annuity business in the following areas of operation: Company Operations/Management; Complaint Handling, Marketing/Sales, Producer Licensing, Producer Oversight, Underwriting and Policyholder Service.

## **METHODOLOGY**

This examination was performed in accordance with Market Regulation standards established by the Department and examination procedures suggested by the NAIC. While examiners report on the errors found in individual files, the examination also focuses on general business practices of the Company.

The Company identified the universe of files for each segment of the review. Based on the universe sizes identified, random sampling was utilized to select the files reviewed for this examination.

Delaware Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. An exception is any instance of Company activity that does not comply with an insurance statute or regulation. Exceptions contained in the Report may result in imposition of penalties. Generally, practices, procedures, or files that were reviewed by Department examiners during the course of an examination may not be referred to in the Report if no improprieties were noted. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was identified. This enables Company management to review these areas of concern in order to determine the potential impact upon Company operations or future compliance.

Throughout the course of the examination, Company officials were provided status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company officials to discuss the various types of exceptions identified during the examination and review written summaries provided on the exceptions found.

## **COMPANY HISTORY AND PROFILE**

The Company was originally incorporated under the laws of the State of Minnesota on January 2, 1973, in the name of St. Paul Life Insurance Company. On December 31, 1987 its parent, the St. Paul Group, changed the name of the company to Golden American Life Insurance Company. On December 21, 1993, the Company redomesticated from Minnesota to Delaware.

On January 1, 2004, the Company, formerly known as Golden American Life Insurance Company (“Golden”), was a party to a merger with affiliated companies. On this date, several events occurred: Golden redomesticated from Delaware to Iowa (IA);, USG Annuity & Life Company (OK) and United Life & Annuity Insurance Company (IA), merged with and into Golden; and Golden changed its name to ING USA. The mergers were approved by the respective domiciliary states of each of the merger companies.

ING USA is a direct, wholly-owned subsidiary of ING Group, N.V. (“ING”). ING is a

global financial services holding company based in the Netherlands, with American Depository Shares listed on the New York Stock Exchange under the symbol “ING”.

## **COMPANY OPERATIONS AND MANAGEMENT**

### **Internal Audit**

The Company provided a list of all internal audits performed in the last five years. The Company also provided minutes from Executive Committee Meetings including remediation actions, suggestions and/or recommendations taken by the Company for any of the internal audits. The lists of all internal audits performed in the last five years, including the Executive Committee Meetings were reviewed.

The Company provided a listing of 95 internal audits that were performed during the examination period, of which only one was related to suitability. This audit was reviewed to ensure compliance with Delaware Law.

No exceptions were noted.

### **Policy Forms**

The Company provided a list and copies of all policy and/or member forms, conversion contracts, applications, riders, amendments and endorsements used during the experience period. The forms provided and forms reviewed in various underwriting sections of the exam were reviewed to ensure compliance with 18 Del. C. §2712, Filing, approval of forms.

No exceptions were noted.

## **CONSUMER COMPLAINTS**

The Company identified two consumer complaints received during the experience period and provided copies of consumer complaint logs. The two complaint files were reviewed.

No exceptions were noted.

## **PRODUCER LICENSING & OVERSIGHT**

The Company provided a list of all producers terminated during the experience period in addition to the Company's oversight policies and procedures regarding the following activities:

- Appointment Procedures
- Product Training & Compliance
- Allegations of Misconduct Reports
- Producer Terminations
- Monitoring Producer Replacement Activity

The policies and procedures were reviewed. The examiners verified and confirmed producers during the Underwriting and Rating file review. The producers were compared to departmental records of producers to verify appointments, terminations and licensing.

No exceptions were noted.

## **MARKETING AND SALES**

The Company provided a list of all printed or audio/visual advertising materials available for use during the experience period. The requested material was reviewed.

The Company provided three separate groups of material. There were 2066 printed advertisements 3975 email templates for electronic advertisements and 477 unique advertisements recorded on the Advertising Review Log. The examiners reviewed the advertising approval procedures as well as nine samples of advertising provided by the company which included buyer's guides, disclosure statements and other advertising.

No exceptions were noted.

## **UNDERWRITING AND RATING**

### **A) Issued Annuities (Replacements)**

The Company provided 36 issued-replacement annuity contracts requested. The entire universe of 36 issued-replacement annuity contracts was selected for review. These contracts were reviewed to determine compliance with contract termination statutes and regulations.

No exceptions were noted.

### **C) Not Taken Annuities**

The company provided one annuity not taken during the experience period. The annuity file reviewed to ensure compliance with the free-look provisions of the contract.

No exceptions were noted.

### **D) Surrendered Annuities**

The Company identified a universe of 278 annuities surrendered during the experience period. A sample of 200 files were reviewed; 109 from the GARWin processing system and 93 from the LifeCAD processing system. Annuity contracts surrendered were reviewed to determine compliance with surrendered statutes and regulations.

No exceptions were noted.

### **E) Terminated Annuities**

The Company provided 32 GARWin system terminated annuity contracts and 30 LifeCAD system terminated annuity contracts as requested. The entire universe was reviewed to determine compliance with contract termination statutes and regulations.

No exceptions were noted.

### **F) Suitability Requirements**

The Company provided its suitability requirements, standards and guidelines, as well as, additional information and documentation. All information and documentation was reviewed for compliance with the requirements of 18 Del. Admin. Code 1214 §6.0, Senior Protection in Annuity Transactions, Duties of Insurers and Insurance Producers.

The examiners found that the Company did not have satisfactory supervision of the sales and suitability reviews of annuity contracts. The Company did not provide evidence of systemic and regular reviews of the suitability process as required by 18 Del. Admin. Code 1214 §6.4.2.2.2 which states “the insurer, based on reasonable selection criteria, periodically selects third parties contracting under section 6.4.2.1 for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances”.

Recommendation: The Examiners recommend that ING USA Annuity and Life Insurance Company comply with 18 Del. Admin. Code 1214 §6.4.2.2.2 and supervise the Suitability process for its broker-dealers.



### **G) Forms**

The Company was provided a list and copies of all policy and/or member forms, conversion contracts, applications, riders, amendments and endorsements used during the experience period. The forms provided and forms reviewed in various underwriting sections of the exam were reviewed to ensure compliance with 18 Del. C. §2712, Filing, approval of forms. For initial exam purposes, forms exceptions found in the other sections of the examination will be addressed in their respective initial summaries.

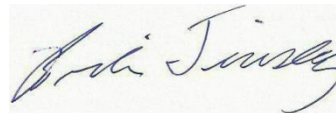
No exceptions were noted.

### **CONCLUSION**

The recommendations made below identify corrective measures the Department finds necessary as a result of the exceptions noted in the Report.

Underwriting and Rating - The Examiners recommend that ING USA Annuity and Life Insurance Company comply with 18 Del. Admin. Code 1214 §6.4.2.2.2 and supervise the suitability process for its broker-dealers.

The examination conducted by Shelly Schuman, Brian Tinsley, Steve Misenheimer, and Ron Poplos is respectfully submitted.



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Brian Tinsley, AIE, MCM  
Examiner-in-Charge  
Market Conduct  
Delaware Department of Insurance